

DOCKET FILE COPY ORIGINAL
RECEIVED
OCT 13 1994
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Equal Access and Interconnection) CC Docket No. 94-54
Obligations Pertaining to)
Commercial Mobile Radio Services)

To: The Commission

**REPLY COMMENTS
OF THE
NATIONAL ASSOCIATION OF BUSINESS
AND EDUCATIONAL RADIO, INC.**

The National Association of Business and Educational Radio, Inc. ("NABER") by its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. §1.415, respectfully submits its Reply Comments in response to the Comments filed in the above-captioned proceeding.

In its initial Comments, NABER stated its belief that equal access obligations should not apply to paging and other forms of narrowband CMRS, as well as two-way services, such as traditional SMR systems, 220 MHz systems and 450-512 MHz two-way systems on Business Radio channels. Since such operators do not control a "bottleneck" facility, the rationale for the imposition of equal access requirements on Bell Operating Companies ("BOCs") is non-existent in the SMR Service. NABER agreed with the Commission that an analysis of "market power" is relevant to consideration of whether imposing equal access obligations would serve other policy goals of the Commission and NABER also agreed with the Commission

No. of Copies rec'd
List ABCDE

CA5

that CMRS providers (other than cellular providers) lack such market power.

NABER pointed out that imposition of equal access obligations can have such a substantial cost for smaller carriers that competition may actually be reduced. For example, on traditional SMR systems, interconnected traffic is typically a small portion of the actual traffic on the system. Long distance traffic on the system is even a smaller portion. Thus, SMR end users care first and foremost about signal quality, coverage area, and monthly cost. Equal access is typically not a user concern on SMR systems. The additional equipment and telephone lines which equal access would require, however, can result in significant cost increases to end users. Thus, there would be little, if any, benefit for the SMR customer from equal access.

NABER opposed mandatory interconnection between CMRS providers and CMRS carrier resale obligations as applied to SMR systems. Since typical SMR customers utilize interconnected service as an adjunct to dispatch service, mandatory interconnection is unnecessary to ensure access to the public switched network. Certainly such a requirement is premature with regard to wide-area SMR systems.

NABER stated that there is no basis to impose carrier resale obligations on SMR operators. The limited capacity of SMR systems mandates a high degree of user management by SMR operators. Mandatory resale obligations would thwart the best efforts of small SMR businesses to effectively manage their customer bases. NABER

believes that mandatory resale is unnecessary for SMR systems because the systems: (1) do not have market power; (2) offer a limited interconnect service; (3) do not control a bottleneck; and (4) customers have many alternatives for service.

A review of the Comments filed in this docket indicates that this proceeding is in reality a dispute between BOC companies,¹ long distance providers,² and some states³ which want to impose equal access requirements on all wireless entities because of a belief of unfairness between the equal access obligations of BOC cellular systems and non-BOC cellular systems. This is best illustrated by the Comments of Bell Atlantic. Bell Atlantic states that non-BOC cellular systems obtain long distance service at a discount and then obtain additional profit by "marking-up" such service to customers.⁴

In response, non-BOC cellular operators state that the Commission and supporters of equal access are attempting to graft a rule developed because a monopoly provider of a bottleneck facility which had a history of anti-competitive behavior onto a market where no such demonstration has been made⁵ to ensure that customers have access to a service (1+) for which they have not

¹See, for example, the Comments of Bell Atlantic Companies.

²See, for example, the Comments of LDDS Communications, Inc. d/b/a LDDSMetromedia ("LDDS").

³See, for example, the Comments of New York Department of Public Service.

⁴See, Comments of Bell Atlantic at 5-6.

⁵See, Comments of Triad Cellular.

asked,⁶ where access to a particular long distance provider is already available⁷ because of marketplace demands.⁸ The Commission's action would not only impose a long distance provider and a fee on wireless calls which are currently completed without toll charges⁹, but would also deprive operators of the ability to negotiate favorable bulk rates (which would increase the cost of each long distance call) and result in billions of dollars of equipment replacement.¹⁰ Customers would ultimately pay a higher cost for (1+) access as these costs are passed on,¹¹ for calls which represent a mere fraction of the current traffic on cellular systems.¹² The Commission must carefully analyze whether the public already has options available and may bear additional cost by the imposition of equal access obligations.

Although NABER does not take a position as to whether equal access requirements should be imposed for cellular systems, it is

⁶See, for example, the Comments of Century Cellunet, Inc. ("Century").

⁷See, for example, the Comments of Point Communications Company ("Point").

⁸See, for example, the Comments of AirTouch Communications ("AirTouch").

⁹See, for example, the Comments of Small Market Cellular Operators ("SMC") and Florida Cellular RSA Limited Partnership ("Florida Cellular").

¹⁰See, for example, the Comments of Vanguard Cellular Systems, Inc. ("Vanguard"), Pacific Telecom Cellular, Inc. ("PTC"), Watercom Communications Systems, Inc., Century and Florida Cellular.

¹¹See, for example, the Comments of PTC.

¹²See, for example, the Comments of Century.

abundantly clear that the requirements should not be imposed on SMR systems.¹³ Each set of comments requesting equal access obligations for CMRS providers attempts to analyze cellular systems, but fails to mention any of the technical or logistical barriers for imposition of the obligation on SMR providers.¹⁴

To its credit, WilTel, Inc. ("WilTel") specifically states that its use of the term "CMRS" is limited to cellular services and service "potentially competitive with cellular services, including personal communications services ("PCS") and enhanced (or wide area) specialized mobile radio ("ESMR") services."¹⁵ However, the Commission decided in its Third Report and Order in GN Docket No. 93-252 that all SMR systems are "potentially competitive".¹⁶

As discussed in NABER's initial Comments, imposition of equal access obligations on SMR providers is neither practical or necessary. Bell Atlantic claims at page 10 of its Comments that

¹³The use of "SMR systems" in these Reply Comments is intended to encompass a interconnected two-way radio systems licensed under Part 90 of the Commission's Rules and previously classified by the FCC as private carriers.

¹⁴See, for example, the Comments of NYNEX Companies ("NYNEX"), BellSouth, General Services Administrative ("GSA") and DCR Communications, Inc.

¹⁵Comments of WilTel at n. 2.

¹⁶FCC 94-212, released September 23, 1992 at para. 58. NABER strongly disagrees with the Commission's assessment in the Third Report and Order. It is the Commission's evaluation that a traditional SMR system has the potential to be competitive with a cellular system because the SMR system could potentially add enough channels to have sufficient capacity to offer a competitive service. However, there is insufficient spectrum in any band to permit an SMR operator to be truly competitive (with the exception of the aggregation already accomplished by Nextel).

"... the cost of conversion to equal access is a one-time expense which can often be made with existing equipment." The fact is that such costs to small businesses are substantial. MCI Telecommunications Corp. ("MCI") believes that cost should not be a consideration in the Commission's analysis, as IXCs will allegedly reimburse wireless operators.¹⁷ However, NABER questions whether MCI understands the scope of its suggestion. There are literally thousands of small SMR operations across the country (hundreds of which are members of NABER) which have no connection to Nextel or the major systems it is acquiring. The expense of system upgrades is simply not worth the total lack of benefit to SMR customers. Further, the up-front expense to SMR operators, which may be reimbursed sometime in the future if the charges are reasonable will cripple the cash flow of such operations and jeopardize their ability to survive, let alone compete in the wireless marketplace.

The costs associated with providing equal access and the inability of current SMR equipment to accomplish the task of providing equal access are clearly documented in the Comments of RAM Mobile Data USA Limited Partnership ("RMD"), OneComm Corporation, Geotek Communications, Inc. ("Geotek") and Dial Call. In particular, Geotek's Comments amply illustrate the costs which could be expected to be incurred by small operators, which typically utilize between one (1) and four (4) transmitter sites. However, no party in this proceeding has demonstrated that the lack

¹⁷MCI Comments at 3.

of equal access: (1) has been a problem for customers of any SMR provider; (2) that SMR customers do not have a choice of service providers; or (3) that equal access will result in lower customer costs on SMR systems. The Commission is proposing to require SMR operators to incur the costs of providing equal access for a problem which it has been shown does not exist, with the result of additional costs for customers. Thus, NABER contends that equal access requirements for SMR systems is not in the public interest and should not be required.

CONCLUSION

WHEREFORE, the National Association of Business and Educational Radio, Inc. respectfully requests that the Commission act in accordance with the views expressed herein.

Respectfully submitted,

**NATIONAL ASSOCIATION OF BUSINESS
AND EDUCATIONAL RADIO, INC.**

By: 
David E. Weisman, Esquire

By: 
Alan S. Tilles, Esquire

Its Attorneys

Meyer, Faller, Weisman and
Rosenberg, P.C.
4400 Jenifer Street, N.W.
Suite 380
Washington, D.C. 20015
(202) 362-1100

Date: October 13, 1994